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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

VANOY, TIMOTHY C

ART UNIT	PAPER NUMBER
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1754

64

DATE MAILED: 02/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09-574,432

Applicant(s)

MOHR et al.

Examiner

VANDY

Group Art Unit

1754

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

THE AMENDMENT MAILED ON SEPT. 26, 2002

☒ Responsive to communication(s) filed on _____

☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-63

is/are pending in the application.

Of the above claim(s) 42-63

is/are withdrawn from consideration.

☐ Claim(s) _____

is/are allowed.

☒ Claim(s) 1-41

is/are rejected.

☐ Claim(s) _____

is/are objected to.

☒ Claim(s) 1-63

are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit: 1754

DETAILED ACTION

Election/Restrictions

Applicants' election of claims 1-41 in the amendment mailed on Sept. 26, 2002 (paper no. 12) is acknowledged. Because the applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Priority

The Applicants' claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225

Art Unit: 1754

USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-42 are provisionally rejected under the judicially created doctrine of double patenting over claims 16-45 of copending Application No. US 2002/0192155 A1. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: The claims of 09-574,432 and US 2002/0192155 A1 disclose obvious variations of the same process for making a catalyst by providing an admixture of porous organic ion exchanger and synthesis mixture, which occupies at least a portion of the pore space of the organic ion exchanger and converting the resulting mixture into a porous inorganic support.

The difference between the claims of 09-574,432 and US 2002/0192155 A1 is that the claims of 09-574,432 call for the presence of a metal within or on the resulting composition.

Art Unit: 1754

Claim 42 in US 2002/0192155 A1 reports that the mesoporous inorganic material may be silica, alumina or aluminum silicate.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process and composition of US 2002/0192155 A1 by providing metals within or on the resulting composition, in the manner called for in the claims of 09-574,432, because the materials mentioned in at least claim 42 in US 2002/0192155 A1 (i. e. the alumina, etc.) are well known supports for such catalytic metals.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

This is not a new ground of rejection in as much as US 2002/0192155 A1 is the published continuation application of 09-315,869, wherein 09-315,869 is now abandoned.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

The person "having ordinary skill in the art" has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The references of record in this application reasonably reflect this level of skill.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 6-12, 14-24, 26-28, 33-36 and 38-41 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U. S. Pat. 4,680,170 to Lowe et al.

Example 1 described in col. 4 in U. S. Pat. 4,680,170 describes what appears to be the same method for making a metal containing-zeolite catalyst (please also see col.

Art Unit: 1754

3 Ins. 10-16) which appears to be useful for aromatisation, hydrocarbon carbon cracking, isomerization processes, etc. (please also see col. 1 Ins. 16-19), wherein the catalyst was made by:

Preparing a "solution A" comprising silica (i. e. the Applicants' "synthesis mixture");

Preparing a "solution B" comprising Dowex 1-XB ion exchange resin (which may be loaded/exchanged with silicate and/or aluminate ions: please also see col. 3 Ins. 10-16);

Adding "solution A" to "solution B"; heating the mixture and allowing it to sit so as to produce a "silicalite" zeolite-type product (please also see col. 3 Ins. 17-20) (*Note that silicalite is expressly mentioned in Applicants' claims 6 and 7*), and

(evidently) separating off the ion exchange resin from the zeolite product (please also see col. 2 Ins. 56-58), in a manner which is not seen to be unobviously distinct from the "method for making" limitations set forth in at least Applicants' claims 16-24, 26-28, 33-36 and 38-41.

The differences between the Applicants' claims and U. S. Pat. 4,680,170 is the manner in which the Applicants *describe* the product zeolite (i. e. " . . . (a) a three-dimensional network of self bound particles of porous inorganic material; and, (b) at least one metal, said particles occupying less than 75% of the total volume of said at least one macrostructure and being joined together to form a three-dimensional interconnected network comprised of pores . . . " set forth in at least Applicants' claim 16; the manner in which the Applicants' *describe* the ion exchange resin (i. e. " . . . has

Art Unit: 1754

an ion exchange capacity greater than about 1 mEq./g of dry porous anionic ion-exchanger" set forth in Applicants' claim 23), etc., however it is submitted that these differences would have been obvious to one of ordinary skill in the art at the time the invention was made because it is expected to be within the skill level of the person having ordinary skill in the art to readily *describe* the components used in the process of manufacturing the zeolites set forth in U. S. Pat. 4,680,170, as well as the chemical and physical properties of the resulting, product zeolite. Since no unobvious distinction is seen or has been shown between the actual process for making the zeolites and the actual zeolites (*per se*), then these claims are rejected under 35 USC 102 – as well as 35 USC 103.

Product claims 1-4, 6-12, 14 and 15 are also rejected since it is reasonably expected that the same method for making zeolites will inherently produce the same claimed zeolite products.

Claims 1-12, 14-36 and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Pat. 4,680,170 to Lowe et al.

Claims 1-4, 6-12, 14-24, 26, 27, 28, 33-36 and 38-41 are rejected as being obvious from U. S. Pat. 4,680,170 to Lowe et al. for the reasons previously set forth.

The difference between the Examples described in U. S. Pat. 4,680,170 and Applicants' claims 5 and 25 is that the Examples of U. S. Pat. 4,680,170 are limited to the production of "silicalite" (please see Examples 1 and 2); the production of "sodalite" (Example 3); what appears to be a mixture of zeolite A and sodalite (Example 4) and a

Art Unit: 1754

mixture of zeolite Nu-2 and amorphous material (Example 5), wherein Applicants' claim 5 and 25 call for "BEA" molecular sieve, etc.

Col. 3 Ins. 55-60 in U. S. Pat. 4,680,170 mentions the synthesis of other zeolites, such as beta zeolite (i. e. "BEA" zeolite); ZSM-12 and ZSM-20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the process described in U. S. Pat. 4,680,170 to make zeolites other than the silicalite, etc. expressly mentioned in the Examples of U. S. Pat. 4,680,170 such as beta (i. e. "BEA") zeolite, etc., in the manner called for in at least Applicants' claims 5 and 25, because the disclosure set forth in col. 3 Ins. 55-60 in U. S. Pat. 4,680,170 fairly suggests that the process disclosed therein can be used to make these other zeolites.

The difference the Applicants' claims and U. S. Pat. 4,680,170 is that Applicants' claims 29-32 set forth the introduction of the metal into various steps of the process for making the zeolite (whereas, in the process of U. S. Pat. 4,680,170, the metal appears to be bound to the resin used to make the zeolite: please see col. 3 Ins. 11-16 in U. S. Pat. 4,680,170), however it is submitted that these differences would have been obvious to one of ordinary skill in the art at the time the invention was made, namely to modify the process described in U. S. Pat. 4,680,170 by introducing the metal into various steps of the method for making the zeolite, in the manner called for in at least Applicants' claims 29-32, because of the expected advantage of resulting, product zeolite to still contain the desired metal. Expected results and/or advantages are submitted to be evidence of obviousness.

Claims 1-41 rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Pat. 4,680,170 to Lowe et al. as applied to claims 1-12, 14-36 and 38-41 above, and further in view of U. S. Pat. 6,160,191 to Smith et al.

The difference between the Applicants' claims and U. S. Pat. 4,680,170 is that Applicants' claims 13 and 37 set forth that the metal is a hydrogenation/dehydrogenation metal (wherein pg. 14 lns. 16-24 in the Applicants' specification mentions what appears to be the same isomerization and cracking set forth in col. 1 lns. 16-20 in U. S. Pat. 4,680,170 as being among the hydrogenation/dehydrogenation processes contemplated, and pg. 14 lns. 26 et seq. in the Applicants' specification sets forth that such hydrogenation/dehydrogenation metals include Pt, Pd, Ir, etc.).

U. S. Pat. 6,160,191 describes the inclusion of the same hydrogenation/dehydrogenation metals (i. e. Pt, Pd, Ir, etc.: please see col. 7 ln. 65 to col. 8 ln. 9 in U. S. Pat. 6,160,191) into a zeolite, which may be used for the same cracking, isomerization, etc. mentioned in col. 1 lns. 16-20 in U. S. Pat. 4,680,170 (please also see col. 8 lns. 24-56 in U. S. Pat. 6,160,191).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process and zeolites described in U. S. Pat. 4,680,170 by including the hydrogenation/dehydrogenation metals set forth in at least Applicants' claims 13 and 37 as well as in col. 7 ln. 65 to col. 8 ln. 9 in U. S. Pat. 6,160,191 into the zeolites, because of the taught advantage of these metals to be

catalytically active for these hydrocarbon conversion reactions (please see col. 7 ln. 65 to col. 8 ln. 2 in U. S. Pat. 6,160,191).

Response to Arguments

Applicants' arguments submitted in the amendment mailed on Sept. 26, 2002 (paper no. 12) have been fully considered but they are not persuasive.

a) *The applicants argue that their invention is distinct from U. S. Pat. 4,680,170 because U. S.-170 does not expressly teach: (i) the use of a porous organic ion exchanger; (ii) a synthesis mixture which occupies at least a portion of the pore space of said porous ion exchanger; (iii) converting the synthesis mixture into a porous inorganic material, and (4) removing the porous organic ion exchanger.*

Regarding argument (i) that the US-170 does not teach the use of a porous ion exchanger. The process of US-170 uses DOWEX resins (please see Example 1 in US-170). Applicants' independent claim 16 calls for the use of a "porous organic ion exchanger", and pg. 20 lns. 1-11 in the applicants' specification sets forth that resins sold under the trademark "Dowex" are among the "organic ion exchangers" that may be used for preparing the macrostructure. The argued difference doesn't seem to exist in as much as the "porous organic ion exchanger" of applicants' claim 16 includes, in fact, the DOWEX resin of Example 1 in US-170, as evinced by the applicants' definition provided on pg. 20 lns. 1-11 in the applicants' specification.

Regarding argument (ii) that US-170 doesn't teach that the synthesis mixture occupies at least a portion of the pore volume of the porous ion exchanger (i. e. the

Art Unit: 1754

DOWEX resin of Example 1 in US-170). Since it has already been established that the applicants' resin and US-170's resin are in fact, indistinct: please compare the DOWEX resin of Example 1 in US-170 to the DOWEX resin on pg. 20 Ins. 1-11 in the applicants' specification, and it is reasonably concluded that the DOWEX resin of US-170 would also be expected to inherently have the same porosity as the DOWEX resin of applicants' claim 16 (as provided by the definition on pg. 20 Ins. 1-11 in the applicants' specification) *and also* since Example 1 in US-170 mixes the resin in with the synthesis mixture, then it is reasonably concluded that the solution resulting from mixing the synthesis mixture with the resin would inherently result in some of the synthesis mixture seeping into the pores of the DOWEX resin. Thus, this argued difference does not exist.

Regarding argument (iii) that that US-170 does not teach converting the synthesis mixture into the porous inorganic material. Please note that the Example 1 in US-170 discloses that the reaction mixture "3243 g Resin. (i. e. the DOWEX resin) 2TPABr.20SiO₂.5Na₂SO₄.1000H₂O (i. e. the synthesis mixture)" was converted into "silicalite" (which at least renders obvious the silicalites of applicants' claims 6 and 7). Thus, this argued difference does not appear to exist.

Regarding argument (iv) that US-170 does not disclose removing the porous organic ion exchanger. Col. 2 Ins. 56-58 in US-170 reports that the ion exchange resin (i. e. the DOWEX resin of Example 1 in US-170 and pg. 20 Ins. 1-11 in the applicants' specification) is readily readily separated from the zeolite product (i. e. the silicalite of Example 1 and applicants' claims 6 and 7). The argued difference does not exist.

b) *The applicants argue that the zeolite of US-170 is not (i) joined together to form a macrostructure; (ii) a 3 dimensional network of self bound particles; (iii) a macrostructure in which the particles occupy a volume that is less than 75% of the total volume of the macrostructure, and (iv) joined together to form a 3 dimensional network of pores.*

If the silicalite of Example 1 in US-170 fails to meet these descriptions, then it is reasonably concluded that the silicalite of applicants' claims 6 and 7 also fail to meet these descriptions, and the applicants' argument raises the issue of whether or not the silicalite of applicants' claims 6 and 7 can possibly be the product of applicants' claim 1. The applicants' have enclosed a physical picture of what a *BEA zeolite looks like at the end of their amendment mailed on Sept. 26, 2002 (paper no. 12), and a *prima facie* comparison between what looks like a typical zeolite and the above descriptions mentioned in the argument doesn't reveal any difference. While it is granted that the word "macrostructure" doesn't appear in US-170, the applicants' specification on pg. 9 lns. 28 and 29 and on pg. 18 lns. 23-25 defines "macrostructure" as the product that results from removing the ion exchanger (i. e. the DOWEX resin) and that the resulting "macrostructure" will usually be the same size and shape of the removed ion exchanger: please see the discussion of the *In re Zletz* 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989) court decision set forth in section 2173.05(a) in the MPEP (8th ed.). Since col. 2 lns. 56-58 in US-170 expressly states that the ion exchange resin is removed from the zeolite product, then the zeolite product of US-170 must also be a "macrostructure", consistent with the applicants' own definition. The applicants' comment on pg. 10, 4th

Art Unit: 1754

full paragraph in their amendment mailed on Sept. 26, 2002: "And the "BDH Dowex 1-XB(Cl) resin" which Lowe '170 uses in Example 1, even when "readily separated from the zeolite product" (Lowe '170, column 2, lines 56-58) does not comprise a structure of self bound zeolite particles joined together to form a three dimensional interconnected network of pores." is noted, however if this true for the product of US-170, then it must also be true for the applicants' product, consistent with their definition of "macrostructure" provided on pgs. 9 and 18 in their specification as previously discussed. Once again, the argued distinction does not appear (literally) to exist.

c) *The applicants argue that US-170 does not teach that their zeolite structure contains at least one metal.*

The sodium mentioned in Example 1 (as well as Example 3) in US-170 is a metal. Wouldn't the zeolite-based "catalysts" mentioned in col. 1 ln. 15 in US-170 support a catalytically active transition metal to promote the "aromatisation", "hydrocarbon cracking", etc. mentioned in col. 1 lns. 16-20? The argued difference does not exist. Note that U. S. Pat. 6,160,191 describes the inclusion of the same hydrogenation/dehydrogenation metals (i. e. Pt, Pd, Ir, etc.: please see col. 7 ln. 65 to col. 8 ln. 9 in U. S. Pat. 6,160,191) into a zeolite, which may be used for the same cracking, isomerization, etc. mentioned in col. 1 lns. 16-20 in U. S. Pat. 4,680,170 (please also see col. 8 lns. 24-56 in U. S. Pat. 6,160,191).

d) *The applicants argue that even if the silicalite of Example 1 in US-170 is a 3 dimensional network of particles, it would not be a 3 dimensional network of pores.*

Art Unit: 1754

The argument ignores that a 3 dimensional network of pores, *pre se*, can not physically exist. The pores have to be present in a physical material (the silicalite particles of the applicants' claims and Example 1 in US-170). More accurately, the structure is not a 3 dimensional network of pores, but a 3 dimensional network of porous particles. If the silicalite of US-170 is not a 3 dimensional network of pores, then neither is the applicants'. The argued difference does not exist.

e) *The applicants argue that Example 4 in US-170 shows the ion exchange resin is regenerated and reused. This suggests that the resin is not porous and that no zeolite forms within the pores of the resin.*

If the DOWEX resin of US-170 is not porous, then neither is the DOWEX resin mentioned on pg. 20 lns. 1-11 in the applicants' specification and included in the scope of "organic ion exchangers" in the applicants' claims porous. The chief purpose of US-170 is to form zeolites: please note the title of the patent.

f) *The applicants argue that the ODP rejection is in error because the applicants' definition of "metal" set forth on pg. 8 ln. 24 to pg. 9 ln. 2 in the applicants' specification excludes the alumina of 09-315,869 from the scope of "metal" recited in the pending claims.*

The argument is not persuasive for at least two reasons:

(i) limitations from the specification are not read into a claim: please see the discussion of the *In re Prater* 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-551 (CCPA 1969) court decision set forth in section 2111 in the MPEP (8th ed.), and

(ii) even if the pending claims were limited to excluding the "metal" from being part of the framework of the molecular sieve (which they are not), there would still be no unobvious distinction in view of the disclosure set forth in U. S. Pat. 6,160,191 which describes (and, therefore, renders obvious) the inclusion of the same hydrogenation/dehydrogenation metals (i. e. Pt, Pd, Ir, etc.: please see col. 7 ln. 65 to col. 8 ln. 9 in U. S. Pat. 6,160,191) into a zeolite, which may be used for the same cracking, isomerization, etc.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy C. Vanoy whose telephone number is 703-308-2540. The examiner can normally be reached on 8 hr. days.

Art Unit: 1754


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 703-308-3837. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-873-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Timothy Vanoy/tv
February 13, 2003


Timothy Vanoy
Patent Examiner

Art Unit 1754


Stanley Silverman
Supervisor, Patent Examiner
Technology Center 1750